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United Artists Corporation
8

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 FOURTH AGE LTD., *et al*,
14 Plaintiffs,
15 v.
16 WARNER BROS. DIGITAL
DISTRIBUTION, *et al*,
17 Defendants.
18

19 WARNER BROS. DIGITAL
DISTRIBUTION INC., *et al*,
20 Counterclaim
21 Plaintiffs,
22 v.
23 FOURTH AGE LTD., *et al*,
24 Counterclaim
25 Defendants.
26
27
28

Case No. 12-9912-ABC (SHx)

**MGM'S RESPONSE TO THE
TOLKIEN/HC PARTIES'
OBJECTIONS TO EVIDENCE
SUBMITTED BY MGM IN
SUPPORT OF ITS REPLY IN
SUPPORT OF JOINDER IN
WARNER'S AND ZAENTZ'S
MOTION TO DISQUALIFY
GREENBERG GLUSKER**

Judge: Hon. Audrey B. Collins
Hearing Date: July 24, 2014
Hearing Time: 10:00 a.m.

Discovery Cut-Off: July 29, 2014

1 Non-Parties Metro-Goldwyn-Mayer Inc., Metro-Goldwyn-Mayer
2 Studios Inc. (f/k/a Metro-Goldwyn-Mayer Inc.), Metro-Goldwyn-Mayer Pictures
3 Inc. and United Artists Corporation (collectively, “MGM”) respectfully submit this
4 Response to the Tolkien/HC Parties’ Objections to Evidence.

5 MGM submitted the Declaration of Edward J. Slizewski in support of
6 its Reply brief to address arguments that the Tolkien/HC Parties raised in their
7 opposition to MGM’s Joinder. It is appropriate for the Court to consider evidence
8 raised for the first time in reply “in response to arguments raised in [the]
9 opposition.” *All Star Seed v. Nationwide Agribusiness Ins. Co.*, 2014 WL 1286561,
10 at *16 (S.D. Cal. Mar. 31, 2014). Moreover, the Tolkien/HC Parties substantively
11 responded to the evidence in their Objections, so there is no prejudice or need for a
12 sur-reply. *See Carrillo v. Schneider Logistics, Inc.*, 2013 WL 140214, at *3, n. 2
13 (C.D. Cal. Jan 7, 2013).

14 The Tolkien/HC Parties’ specific objections to Paragraphs 3-5 of the
15 Slizewski are meritless. Mr. Slizewski’s testimony does not lack foundation: as
16 the Senior Vice President of Financial Affairs at Metro-Goldwyn-Mayer Studios
17 Inc., he has personal knowledge of the facts set forth in the declaration. Nor is it
18 hearsay: Mr. Slizewski does not attest to any out-of-court statements. Finally, the
19 Tolkien/HC Parties assert that Paragraphs 3-5 are irrelevant, based on arguments
20 that, like their other arguments opposing MGM’s Joinder, are hyper-technical and
21 incorrect. Mr. Slizewski’s declaration establishes that United Artists Corp., the
22 privilege-holder, is a subsidiary of Metro-Goldwyn-Mayer Studios Inc., and
23 therefore has an interest in the litigation through the other MGM entities. The
24 Tolkien/HC Parties’ reliance on *Morrison Knudsen Corp. v. Hancock, Rother &*
25 *Bunshoft*, 69 Cal. App. 4th 223, 240 (1999), is misplaced. There, the Court
26 disqualified a law firm from representing a subsidiary because the firm had
27 previously represented the parent, affirming the trial court’s ruling that the parent
28 and subsidiary should be treated as a single entity for purposes of the conflict.

1 Likewise here, the fact that the privilege-holder is not the same formal entity that
2 has an economic interest in the litigation should not deprive MGM of its ability to
3 protect its attorney-client privilege. The Tolkien/HC Parties also complain that
4 MGM did not describe its rights in *The Hobbit* films with enough specificity, but
5 more specificity is unnecessary—the declaration provides evidence that MGM has
6 an economic interest in the litigation, which is the only relevant point.

7 For the foregoing reasons, MGM respectfully requests that the
8 Tolkien/HC Parties' objections to MGM's evidence be overruled.

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10 Dated: July 21, 2014

Respectfully submitted,

11 /s/ Robert A. Sacks

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